requested in view of the remarks which follow:

Initially, Applicants note that the Restriction indicates :

Group I. Claims 1-19 drawn to a calcium phosphate composite body, classified in class 428 subclass 307.3 and 327, and

Group II. Claims 20-24, drawn to a method of making the composite body classified in class 523, subclass 200.

ELECTION

In order to be responsive to the requirement for restriction, Applicants elect with traverse Group I, claims 1-19 for examination.

TRAVERSE

Notwithstanding the election of Group I claims for examination, Applicants submit that a restriction is inappropriate in this case.

It is respectfully submitted that the Examiner has not explained how the difference between the product and the process of making the product in the present application is sufficiently "materially different" so as to justify the Restriction requirement. With regard to the Restriction, the Examiner has merely stated that the composite may be made by a different process such as by using a crosslinkable resin than can crosslink during heat pressing process as opposed to using a resin which is at least partially crosslinked in advance.

Furthermore, as the Examiner appreciates, in order to justify a requirement for restriction the difference between the invention defined by the various groups of the claims must be material. Despite this requirement, although the Examiner has characterized the noted difference as being material, the Examiner has not stated or

offered a definition of what is "materially different" to justify a requirement for restriction, or offered an explanation as to why the mentioned differences are material for restriction requirement purposes.

Furthermore, the Restriction should be withdrawn because there is no serious search burden. In MPEP Chapter 800, the Office sets forth its policy by which examiners are guided in requiring restriction under 35 U.S.C. §121. Section 803 states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Although Groups I and II differ in that Group I is directed to a product and Group II is directed to a process of making the product, the underlying concepts are quite similar. Thus, a search for the claims of Group I should cover areas relevant to the claims of Group II. Therefore, as a practical matter, the searches for the Groups should significantly overlap. Thus, the search burden would not be serious.

It is also important for the Examiner to understand that Applicants have paid a filing fee for an examination of all the claims in this application. If, however, the Examiner refuses to examine all the claims paid for when filing this application and persists in requiring Applicants to file divisional applications for each group of claims, the Examiner is essentially forcing Applicants to pay duplicative fees for the non-elected or withdrawn claims.

As a final note, even if the restriction requirement is maintained, if product claims are found to be patentable, withdrawn process claims which include the recitations of the

product claims should be rejoined. The Examiner is reminded that M.P.E.P. §821.04 states:

> However, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of an allowable product claim will be rejoined.

Thus, if product claims are found to be allowable, the process claims of Group II which include the composition recitations of the allowed claims should be rejoined.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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